

FILED
U.S. DISTRICT COURT

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DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

KLEIN-BECKER usa, LLC, a Utah limited
liability company,

Plaintiff,

v.

ALLERGAN, INC., a Delaware corporation,
and MEDIACOM WORLDWIDE, INC., a
Delaware corporation,

Defendants.

ALLERGAN, INC., a Delaware corporation,

Counterclaimant,

v.

KLEIN-BECKER usa, LLC, a Utah limited
liability company,

Counter-Defendant.

**ORDER REGARDING
FEBRUARY 22, 2006 MOTIONS HEARING**

CASE NO.: 2:03CV00514 DB

Honorable Dee Benson

Magistrate Paul Warner

The motions identified below came before the Court for hearing on February 22, 2006.

Having read the briefing and considered the arguments of counsel, and for other good cause appearing, the Court orders as follows:

1. *Allergan's Motion to Quash, or in the Alternative, for Protective Order* regarding certain physician subpoenas is referred to Magistrate Paul Warner for consideration and decision;
2. *Allergan's Motion for Partial Summary Judgment* is stayed, pursuant to Klein-Becker's request for Rule 56(f) relief, which was previously granted by the Court;
3. *Klein-Becker's Motion for Partial Summary Judgment Against Allergan's Trademark Infringement, Dilution, and False Association Counterclaims* is stayed, and Allergan's corresponding request for Rule 56(f) relief is granted;
4. *Klein-Becker's Motion to Lift Confidentiality Designation from Allergan, Inc.'s Communications with the FDA and FTC* is granted. The parties stipulated that the documents in question will be shown only to select members of Klein-Becker's management and legal teams, pursuant to the terms of the Protective Order. The parties have also agreed to identify and agree upon the members of Klein-Becker's management and legal teams who may be shown the documents. Additionally, Klein-Becker may produce and use the documents in question in any other legal proceeding where the FDA's January 2005 letter to Klein-Becker is put at issue, provided that Klein-Becker take appropriate steps to keep the documents in question confidential in any such proceeding;
5. *Klein-Becker's Motion for Leave to File a Third Amended Complaint* is denied;
6. *Allergan's Motion to Dismiss Klein-Becker's First, Second, and Third Claims in Klein-Becker's Second Amended Complaint* is granted in part, and denied in part. The Court grants Allergan's Motion to Dismiss with respect to the First Cause of Action for cancellation of

Allergan's trademark and the Third Cause of Action for common law unfair competition. The Motion is denied with respect to Klein-Becker's Second Cause of Action for False Advertising.

7. *Allergan's Motion for Issuance of a Letter of Request*, being unopposed, is granted.

Dated this 16th day of March, 2006.

BY THE COURT:


Honorable Dee Benson
United States District Court Judge

Approved as to Form:

/s/ George M. Haley